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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 2:10-CV-187-LRH-
(RJJ)

HAFEN RANCH ESTATES, a Nevada Corporation;
NYE COUNTY CONSTRUCTION, LLC, a Nevada
Limited-Liability Company; and PAHRUMP
UTILITY COMPANY, INC., a Nevada Corporation,

Plaintiffs,

v.

KEVIN MCGINNIS, a Nevada Resident; THE
FORD METER BOX COMPANY INC., an Indiana
Corporation; A.Y. MCDONALD MFG. CO., an
Iowa Corporation; FERGUSON ENTERPRISES,
INC., a Virginia Corporation; HD SUPPLY
WATERWORKS, LP, a Florida Limited Partnership;
U.S. FILTER DISTRIBUTION GROUP, INC., a
Georgia Corporation; NATIONAL
WATERWORKS, INC., a Texas Corporation; WFX,
LLC d/b/a WESFLEX PIPE MANUFACTURING, a
California Limited-Liability Company; CHEVRON
PHILLIPS CHEMICAL COMPANY LP, a Texas
Limited Partnership; DOES I-X; and ROE
CORPORATIONS XI-XX,

Defendants.

**PLAINTIFFS' REPLY IN
SUPPORT OF MOTION TO
STRIKE THE AFFIDAVIT OF
PHILIP S. GERSON, THE
ACCOMPANYING EXHIBITS,
AND ALL RELATED
ARGUMENTS**

I.

INTRODUCTION

At issue is whether Plaintiffs own any residential property or appurtenances whatsoever in Nye County, Nevada. Ferguson's Reply in Support of its Motion to Dismiss and for More Definite Statement (Doc. #35) includes numerous patently false statements that Plaintiffs do not

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own any residential property or appurtenances in Nye County and Ferguson claims to have "confirmed" this falsehood. Ferguson's reply brief contained the following false statements: (1) "Plaintiffs are not owners of new residences or appurtenances" (Doc. #35, 5:22); (2) "Plaintiff PAHRUMP owns a number of commercial properties; but no residential" (Doc. #35, 5:24); (3) "Plaintiff HAFEN RANCH owns nearly 200 industrial properties whose land use is for 'Truck Stops with Motels' and one residential parcel whose land use is 'vacant common area'" (Doc. #35, 25-26); (4) "Ferguson **has confirmed** that the usage classifications for the parcels owned by Plaintiffs are 710-Intracounty Public Utility, 514-Industrial Truck Stop with Motels, and 240-Residential-Vacant Common Area" (Doc. #35, 5:27 – 6:1) (emphasis added); (5) "Plaintiffs own only one parcel which is currently zoned residential" (Doc. #35, 6:1-2); and (6) "Neither Plaintiff [PAHRUMP nor NYE COUNTY] own any residential property in Nye County." (Doc. #35, 3-5).

The numerous pieces of evidence set forth by Plaintiffs clearly demonstrate that Ferguson's claims are unfounded. Furthermore, Ferguson alleges to have confirmed all of Plaintiffs' residential property and appurtenance ownership interests after performing a brief search on the Nye County Assessor's website. In making its claims, Ferguson presented no evidence regarding ownership of the residential water services lines throughout the Artesia at Hafen Ranch Estates development ("Water Service Lines"), which are at the heart of this litigation. Importantly, Ferguson did not even discuss the Water Service Lines or the owners of the lines. Instead, Ferguson presented evidence that took no more than five minutes to find and then claimed to have confirmed all of Plaintiffs' ownership interests in residential property and appurtenances in Nye County.

II.

ARGUMENT

The primary flaw in Ferguson's allegedly confirmed claim that Plaintiffs do not own residential property or appurtenances in Nye County is the lack of any investigation by or evidence from Ferguson regarding ownership of the Water Service Lines. Plaintiffs' Complaint and subsequent briefs submitted to this Court clearly state that Plaintiffs' claims relate to

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1 damages in the Water Service Lines. The Water Service Lines run under the streets from the
2 main water line to the curb stop at the residential property line and provide water to hundreds of
3 residential properties in the Artesia at Hafen Ranch Estates development. Ownership of the
4 Water Service Lines is certainly not something that can be confirmed by spending five minutes
5 on the Nye County Assessor's website. Without providing any information regarding the Water
6 Service Lines, Ferguson blatantly overreached in representing to this Court that it had
7 "confirmed" Plaintiffs own no residential property or appurtenances in Nye County.

8 Regarding the less important information related to Plaintiffs' individual parcel
9 ownership, Ferguson chose to ignore the evidence submitted by Plaintiffs and maintain its
10 position that Plaintiffs do not own any residential parcels. Rather than responding to the
11 evidence submitted by Plaintiffs, Ferguson decided to cling to the one piece of information that
12 contradicts all the rest of the evidence – the land use designations. Ferguson's reliance on
13 nothing more than the land use designation codes, which indicate the lots are to be used for
14 Truck Stops with Motels, to claim Plaintiffs do not own residential parcels is absurd based on (1)
15 the residential zoning of the parcels on the zoning map (Doc. #46-1), (2) the residential zoning
16 on the individual parcel records (Doc. #46-2), (3) the recorded subdivision maps illustrating a
17 residential neighborhood developed on the property (Doc. #46-3), and (4) the fact that this entire
18 development is a residential neighborhood full of homes and not a single truck stop or motel.
19 Ferguson's position defies the evidence and common sense. Plaintiffs are unsure why the Nye
20 County Assessor's website shows an industrial land use code for some of lots in the Artesia at
21 Hafen Ranch Estates development. No matter the reason for the error, the information is
22 inaccurate and not probative of whether these lots are actually zoned for residential use. The
23 totality of the evidence clearly demonstrates the designation is incorrect because the lots are
24 zoned for and being used for hundreds of residential properties. Because Ferguson's evidence is
25 incorrect and incomplete, its claims regarding Plaintiffs' property ownership are untrue and must
26 be disregarded.

27 ...

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III.

CONCLUSION

False information is never admissible and any arguments stemming therefrom are inappropriate for this Court or a jury. As such, Plaintiffs respectfully request that this Court strike the inaccurate information provided by Ferguson along with the misleading and untrue arguments based on that information.

DATED this 6th day of May, 2010.

Respectfully submitted by:

KEMP, JONES & COULTHARD, LLP

/s/ Michael J. Gayan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO STRIKE THE AFFIDAVIT OF PHILIP S. GERSON, THE ACCOMPANYING EXHIBITS, AND ALL RELATED ARGUMENTS** was made on the 6th day of May, 2010, via the United States District Court's CM/ECF electronic filing system addressed to all parties on the e-service list.


An employee of Kemp, Jones & Coulthard